

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 613 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

SONSINH JASHVANTSINH RAMLAVAT

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/02/98

ORAL JUDGEMENT

1. Rule. Ld.APP, Mr.A.J.Desai has appeared in
response to notice issued earlier. With the consent of
learned advocates for the parties, matter is finally
heard today.

2. The petitioner has challenged the legality and

validity of the order, dated 30th July, 1997 passed by the Ld.Addl.Sessions Judge, Saharkantha at Himmatnagar on the application bearing Criminal Miscellaneous Application No.538/96 moved by the present petitioner.

3. The petitioner is the owner of a Gun of 12 bore and did possess a licence for the same. That the petitioner was involved in a criminal case registered as Sessions Case No.26/90. The said case was filed by police against the petitioner and someother accused for the offences made punishable under sections 147, 148, 149, 307, 323, 324, 507, 506(2) IPC and 25(c) of Arms Act and also under section 135 of Bombay Police Act, 1951. That during investigation of said offence the police has seized and taken the said gun into custody. That the petitioner was convicted in the said case by the Ld.Sessions Judge, Sabarkantha District at Himmatnagar and was sentenced to undergo Rigorous Imprisonment of 5 years and to pay fine of Rs.300/- and that in default of payment of fine he was ordered to undergo Simple Imprisonment for one month. Other accused were sentenced till the rising of the court and to pay fine of Rs.300/-. That the petitioner preferred appeal against conviction and sentence in the High Court bearing Criminal Appeal No.664/96. That the State also preferred appeal against the petitioner and other accused being Criminal Appeal No.854/94 claiming enhancement of sentence. That during the hearing of said criminal appeals on account of settlement between the parties the compromise was presented before the High Court and after due verification it was recorded and the Criminal Appeal No.664/94 filed by the present petitioner against the conviction and sentence was allowed and the order of conviction and sentence passed by the trial court was quashed and set aside. The petitioner was acquitted of the offences charged against him. That the fine, if paid by the petitioner, was also ordered to be refunded. As regards muddamal the court passed the order that the appellant shall be at liberty to move the Sessions Court to take back the same if he gets due licence or his licence is renewed by the District Magistrate.

4. That after the judgment was delivered by the High Court on the basis of compromise on 16.2.96 the present petitioner moved the Sessions court, Sabarkantha District at Himmatnagar and obtained licence for renewal. That on application of the petitioner the concerned authority renewed the licence. The petitioner has produced the xerox copy of the same at annexure "C" to the petition. That thereafter petitioner moved another application being Criminal Miscellaneous Application No.538/96 before

the Sessions Court, Sabarkantha District at Himmatnagar for returning the muddamal article, i.e. gun according to the order passed by this court in Criminal Appeal Nos 664/94 & 854/94, dated 16.2.96.

5. The Ld.Addl.Sessions Judge, Sabarkantha District at Himmatnagar heard the said application and vide order, dated 30th July, 1997 rejected the application holding that the petitioner is acquitted by the High Court on account of compromise. That the petitioner was given a licence to possess the gun for the protection of his crop. However, the petitioner has used the said gun to commit offence. Under such circumstances, it would not be just and proper to return the said gun to the petitioner.

6. The petitioner has challenged the said order by present revision application. I have heard Mr.K.R.Raval, Ld.advocate for petitioner and have perused the papers produced including the copy of judgment delivered by this court on 16.2.96 in the matter of Criminal Appeal Nos 664/94 and 854/94. In my opinion, the Ld.Addl.Sessions Judge has committed error of law by rejecting the application and depriving the present petitioner of his property which he is entitled to hold with licence.

7. On the basis of aforesaid discussion, Criminal Revision Application No.613/97 is allowed. The order passed by the Ld.Addl.Sessions Judge, Sabarkantha District at Himmatnagar dated 30th July, 1997 in the matter of Criminal Miscellaneous Application No.538/96 is hereby set aside and quashed.

8. The Ld.Addl.Sessions Judge, Sabarkantha District at Himmatnagar is directed to return the gun of the petitioner which was produced before the court as muddamal article in Sessions Case No.26/90 filed by the State against the present petitioner. Petitioner should be returned the said gun within a period of four weeks from the date of receipt of this order. Rule is made absolute accordingly with no order as to costs.

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